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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket No. 03-1097)

In the Application of:

N. Geoffrey Greenberg

Serial No. 10/759,586

Filed: January 15, 2004

For: SEWING THREAD

Before the Examiner
Hurley, Shaun R.

Group Art Unit:
3765

TRANSMITTAL LETTER

MAIL STOP APPEAL BRIEF-PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Examiner:

In regard to the above-identified patent application:

1. We are transmitting herewith the attached Appellant's Reply Brief, and return receipt post card.
2. With respect to fees: No fee is required.
3. Please charge any additional fees or credit over-payments to the Deposit Account No.13-2490.
4. CERTIFICATE UNDER 37 CFR 1.10 (EXPRESS MAIL): The undersigned hereby certifies that this Transmittal Letter and the documents hereinabove listed are being deposited with the United States Postal Service as "Express Mail Post Office to Addressee" being Express Mail No. EV844632325 in an envelope addressed to: MAIL STOP Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 16th day of January, 2007.

By: _____

David M. Frischkorn
Reg. No. 32,833



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APPELLANT'S REPLY BRIEF

Mail Stop Appeal Brief-Patents
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In response to the Examiner's Answer mailed December 7, 2006, and pursuant to 37 C.F.R. § 41.41, please accept the following reply.

The Examiner has failed to demonstrate that any of the cited references teach or suggest that one or more spun yarns of a composite sewing thread has a twist level of 4 tpi or more greater than the plied composite of the yarns. This is a requirement of all pending claims. The Hatch and Smith references are limited to "balanced" composites, i.e., where the twist of the plied composite is equal to the twist imparted on the individual yarns that make up the composite. Applicant's invention is completely opposite the teachings of both references because the claimed sewing thread composite of plied yarns *must* have a twist of 4 tpi or less than the individual "at least one spun yarn." (See Claim 1 and pages 4 and 5 of Opening Brief.)

The Examiner points to one sentence in Smith at lines 13-16, paragraph 29, in an attempt to support his obviousness argument. That sentence, however, describes an embodiment where three *untwisted* individual yarns are plied together and then a “single twisting step” is performed where all three yarns are twisted together in a clockwise direction. Clearly, because the individual yarns in Smith start as *untwisted*, it is impossible to end up with a composite as claimed by the Applicant, i.e., where the composite has less twist than at least one spun yarn. Following the teaching of Smith, as relied on by the Examiner, the three individual yarns and the composite would have the exact same turns per inch (tpi) because all three yarns are twisted *only* once in the clockwise direction. Thus, the result is a “balanced” twist. This is completely consistent with the preceding sentence in Smith, which Applicant highlighted in yellow in its Opening Brief.

The Examiner’s response to Applicant’s non-analogous art argument also has several flaws. First, “sewing thread” is a composite of two words having well-known common meanings;

sewing = to make, repair, or fasten by stitching, as with a needle and thread or a sewing machine

thread = fine cord of fibrous material, such as cotton or flax, made of two or more filaments twisted together and used in needlework and the weaving of cloth

(American Heritage Dictionary © 2000). Each of Applicant’s pending claims specifically recites and is limited to “sewing thread.” Accordingly, the breath of the claims cannot possibly include “elevator rope” as suggested by the Examiner. Second, the Examiner is mistaken in saying that Applicant “provides no dimensions, no deniers and no weight requirements.” (See Examiner’s Answer). Indeed, on page 7 of the application, lines 15-19, Applicant specifies that the “sewing

thread” can be composed of at least one yarn of 100% staple fibers, where the average length of the fiber is less than 3 inches and has a weight requirement of less than 2.0 denier/filament. This weight and size of staple fiber could not possibly be used in fabricating a commercial elevator rope! Applicant also stated that a preferred staple fiber is one made from a synthetic polymer. Additionally, in the Example section of the application a sewing thread made in accordance with the invention is described that has “two plies of 100% spun yarn made from polyester staple fiber, each having a 12/1 cotton count. The length and denier of the polyester staple was 1.75 inches and 1.2 den/fil.” Applicant has clearly disclosed, contrary to the Examiner’s contention, the necessary physical properties of sewing thread sufficient to distinguish the claimed inventions from elevator rope.

The Examiner’s reliance on a *hypothetical* “doll house” elevator that *might* use sewing thread to lift it is misplaced and improper, not to mention nonsensical. Further, it does not change the fact that Applicant’s claims are all directed to sewing thread. Thus, reliance on Smith, which only discloses the fabrication of commercial elevator rope, is improper as non-analogous art because one skilled in the art of designing and manufacturing sewing threads would not look to such art.


And finally, Applicant notes the Examiner did not address Applicant’s argument that Smith is completely silent with respect to using yarns composed of 100% staple fibers. Indeed, Smith is only directed to the use of *synthetic continuous* filament yarns. Applicant’s invention requires that “at least one yarn” be composed of 100% *staple fibers*, which are not mentioned anywhere in Smith.

Accordingly, Applicant again respectfully requests that the Board overturn the Examiner's rejection.

Respectfully submitted,

McDonnell Boehnen Hulbert & Berghoff

Date: 1/16/07

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